

109 FERC ¶ 61,123
FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

November 1, 2004

In Reply Refer To:
Fibrominn LLC
Docket No. ER04-1245-000

Hogan & Hartson, L.L.P.
Attn: Mr. John R. Lilyestrom, Esq.
Counsel for Fibrominn LLC
555 Thirteenth Street N.W.
Washington, DC 20004-1109

Dear Mr. Lilyestrom:

1. On September 24, 2004, Fibrominn LLC (Fibrominn) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. It also includes the Commission's market behavior rules.¹ Fibrominn's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective on the date Fibrominn commences generation of electric energy, as requested.² Please advise the Commission of the date on which generation commences and resubmit all of the tariff sheets within 15 days of that date to reflect the correct effective date.
2. Fibrominn is a Delaware limited liability company whose principal place of business is Yardley, Pennsylvania. Fibrominn was formed to construct, lease and operate a 50-MW, biomass-fueled, small power production facility located in Benson, Minnesota. This facility has not yet been constructed, and the anticipated completion date is December 2006. The facility will be owned by PowerMinn 9090, LLC, and will be leased to Fibrominn for twenty-three years once operational. The facility will be interconnected to the transmission system of Great River Energy.

¹ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

² Rate Schedule FERC No. 1, Original Sheet Nos. 1-3. Waiver of section 35.3 of the Commission's regulations is granted to allow for the effective date noted above.

3. Fibrominn is a subsidiary of Fibrowatt LLC, a company engaged in the business of developing electricity projects using alternative fuels. Fibrominn is not currently affiliated with any entity that owns or controls generation or transmission assets.

Procedural Matters

4. Notice of Fibrominn's filing was published in the *Federal Register*, 69 Fed. Reg. 59,914 (2004), with comments, protests, and interventions due on or before October 15, 2004. None was filed.

Discussion

Market-Based Rate Authorization

5. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.³ As discussed below, the Commission concludes that Fibrominn satisfies the standards for market-based rate authority.

6. Fibrominn cites section 35.27(a) of the Commission's regulations, which provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.⁴ If an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.⁵

7. Fibrominn has not yet commenced construction of the facility, and neither it nor any of its affiliates owns or controls any generation in the relevant market. Accordingly, the Commission finds that Fibrominn satisfies the Commission's generation market power standard for the grant of market-based rate authority.

³ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996), *Letter Order Approving Settlement*, 79 FERC ¶ 61,149 (1997); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); accord *Heartland Energy Services, Inc., et al.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

⁴ 18 C.F.R. § 35.27(a) (2004).

⁵ *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

8. Fibrominn states that neither it nor any of its affiliates owns or operates any transmission facilities. Based on Fibrominn's representation, the Commission finds that Fibrominn satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

9. Fibrominn states that neither it nor any of its affiliates owns or controls undeveloped sites of key inputs that could interfere with competitive entry into any geographic market. Based on this representation, the Commission is satisfied that neither Fibrominn nor any of its affiliates can erect barriers to entry.

10. Fibrominn states that neither it nor any of its affiliates has a retail service territory and therefore cannot engage in affiliate abuse or reciprocal dealing. Based on this representation, the Commission finds that Fibrominn satisfies the Commission's concerns with regard to affiliate abuse.

Other Waivers, Authorizations and Reporting Requirements

11. Fibrominn requests the following waivers and authorizations: (1) waiver of Parts 41, 101 and 141 of the Commission's accounting and periodic reporting requirements, with the exception of Parts 141.14 and 141.15; (2) waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except as to sections 35.12(a), 35.13(b), 35.15 and 35.16; (3) abbreviated filings with respect to interlocking directorates under Parts 45 and 46 of the Commission's regulations; and (4) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

12. Fibrominn's request for waiver of Part 46 of the Commission's regulations regarding interlocking directors is denied. The Commission has stated that the requirements of Part 46 regarding interlocking directors are statutory in nature and may not be waived.⁶

⁶ *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 (1993), *order on reh'g*, 66 FERC ¶ 61,244 (1994).

13. The Commission will grant the remaining requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.⁷ Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects Fibrominn to keep its accounting records in accordance with generally accepted accounting principles.

14. Within 30 days of the date of the issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Fibrominn should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214 (2004).

15. Absent a request to be heard within the period set forth above, Fibrominn is hereby authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Fibrominn, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

16. Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted below, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving Fibrominn. Any such person instead shall file a sworn application providing the following information:

- (1) full name and business address; and
- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

⁷ It should be noted that the Commission is examining the issue of continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101 and 141) as well as continued applicability of the blanket authorization for the issuance of securities and the assumption of obligations and liabilities, (18 C.F.R. Part 34). *See Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities*, Order No. 627, 67 Fed. Reg. 67,691 at P 23 and P 24 (October 10, 2002), FERC Stats. & Regs. ¶ 32,558 (2002).

17. The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Fibrominn's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

18. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.⁸ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁹ Accordingly, Fibrominn must file its first Electric Quarterly Report no later than 30 days after the first quarter Fibrominn's rate schedule is in effect.¹⁰

19. Fibrominn is directed to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These characteristics include, but are not limited to: (1) ownership of generating or transmission facilities or inputs to electric power

⁸ *Revised Public Utility Filing Requirements, Order No. 2001*, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

⁹ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

¹⁰ Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.¹¹

20. Fibrominn is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.

¹¹ The Commission issued a Notice of Proposed Rulemaking in Docket No. RM04-14-000 in which the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates. *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004). The change of status requirements outlined herein are subject to the outcome of the rulemaking.